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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Hector Parra-Francisco,

Petitioner,

vs.

United States of America,

Respondent.

CASE NO. CV-06-136-PHX-FRZ
CR-01-616-PHX-FRZ

ORDER

Pending before the Court is Petitioner's January 24, 2006 "Amended Motion for Time Reduction by an Inmate in Federal Custody, (28 U.S.C. § 2255)." The Court will dismiss the amended motion without prejudice because, as was the case with the January 4, 2006 motion which the current document amends, the Court lacks subject matter jurisdiction over it. *See* 28 U.S.C. §§ 2255 and 2244(b)(3); *United States v. Allen*, 157 F.3d 661, 664 (9th Cir. 1998); *United States v. Alvarez-Ramirez*, 128 F. Supp. 2d 1265, 1267 (C.D. Cal. 2001).

Pursuant to Ninth Circuit Rule 22-3(a), the Court will direct the Clerk of the Court to refer Petitioner's amended second § 2255 habeas petition to the Ninth Circuit Court of Appeals. Moreover, as a courtesy to Petitioner, the Court will direct the Clerk of the Court to provide Petitioner with a form recommended by the Ninth Circuit for filing an Application for Leave to File Second or Successive Petition Under 28 U.S.C. § 2254 or Motion Under 28 U.S.C. § 2255.

1 Accordingly,


2 **IT IS ORDERED** that Petitioner's January 24, 2006 "Amended Motion for Time
3 Reduction by an Inmate in Federal Custody, (28 U.S.C. § 2255)" (U.S.D.C. document #56
4 in CR-01-616-PHX-FRZ) and this action (CV-06-0136-PHX-FRZ) are **DISMISSED**
5 **WITHOUT PREJUDICE** to allow Petitioner to seek certification from the Ninth Circuit
6 Court of Appeals to file a second or successive petition.

7
8 **IT IS FURTHER ORDERED** that the Clerk of the Court **SHALL SEND** a copy of
9 this Order and Petitioner's January 24, 2006 "Amended Motion for Time Reduction by an
10 Inmate in Federal Custody, (28 U.S.C. § 2255)" (U.S.D.C. document #56 in CR-01-616-
11 PHX-FRZ) to the **Ninth Circuit Court of Appeals**.

12
13 **IT IS FURTHER ORDERED** that the Clerk of the Court **SHALL SERVE** a copy
14 of this Order on **Petitioner** and **SHALL PROVIDE** Petitioner with a form recommended
15 by the Ninth Circuit Court of Appeals for filing an Application for Leave to File Second or
16 Successive Petition Under 28 U.S.C. § 2254 or Motion Under 28 U.S.C. § 2255.

17
18 **IT IS FURTHER ORDERED** that the Clerk of the Court **SHALL SERVE** a copy
19 of this Order and Petitioner's January 24, 2006 "Amended Motion for Time Reduction by
20 an Inmate in Federal Custody, (28 U.S.C. § 2255)" (U.S.D.C. document #56 in CR-01-616-
21 PHX-FRZ) on **Respondent**.

22
23 DATED this 31st day of January, 2006.

24
25
26 
27 FRANK R. ZAPATA
28 United States District Judge

Form 12. **Application for Leave to File Second or Successive Petition**
(New, 7/1/02) **Under 28 U.S.C. § 2254 or Motion Under 28 U.S.C. § 2255**

UNITED STATES COURT of APPEALS
for the NINTH CIRCUIT
95 Seventh Street
San Francisco, California 94103

Application for Leave to File Second or Successive Petition
Under 28 U.S.C. § 2254 or Motion Under 28 U.S.C. § 2255

Docket Number _____
(to be provided by court)

Petitioner's name _____

Prisoner registration number _____

Address _____

Instructions - Read Carefully

- (1) This application, whether handwritten or typewritten, must be legible and signed by the petitioner under penalty of perjury. An original and five (5) copies must be provided to the Clerk of the Ninth Circuit. The application must comply with 9th Circuit Rule 22-3, which is attached to this form.
- (2) All questions must be answered concisely. Add separate sheets if necessary.
- (3) The petitioner **shall** serve a copy of this application and any attachments on respondent and must complete and file a proof of service with this application.
- (4) The petitioner **shall** attach to this application copies of the magistrate judge's report and recommendation and the district court's opinion in any prior federal habeas proceeding under 28 U.S.C. § 2254 or § 2255 or state why such documents are unavailable to petitioner.

You Must Answer the Following Questions:

- (1) What conviction(s) are you challenging?

(2) In what court(s) were you convicted of these crime(s)?

(3) What was the date of each of your conviction(s) and what is the length of each sentence?

For questions (4) through (9), provide information separately for each of your previous §§ 2254 or 2255 proceedings. Use additional pages if necessary.

(4) With respect to **each** conviction and sentence, have you ever filed a petition or motion for habeas corpus relief in federal court under **28 U.S.C. § 2254** or **§ 2255**?

Yes **G** No **G**

(a) In which federal district court did you file a petition or motion?

(b) What was the docket number? _____

(c) On what date did you file the petition/motion? _____

(5) What grounds were raised in your previous habeas proceeding?
(list all grounds and issues previously raised in that petition/ motion)

(6) Did the district court hold an evidentiary hearing? Yes **G** No **G**

(7) How did the district court rule on your petition/motion?

G District court **dismissed** petition/motion? If yes, on what grounds?

G District court **denied** petition/motion;

G District court **granted** relief;
if yes, on what claims and what was the relief?

(Attach copies of all reports and orders issued by the district court.)

(8) On what date did the district court decide your petition/motion?

(9) Did you file an appeal from that disposition? Yes **G** No **G**

(a) What was the docket number of your appeal? _____

(b) How did the court of appeals decide your appeal? _____

(10) State concisely each and every ground or issue you wish to raise in your current petition or motion for habeas relief. Summarize briefly the facts supporting each ground or issue.

(11) For each ground raised, was it raised in the state courts? If so, what did the state courts rule and when?

(12) For each ground/issue raised, was this claim raised in any prior federal petition/motion? (list each ground separately)

- (13) For each ground/issue raised, does this claim rely on a new rule of constitutional law? (list each ground separately and give case name and citation for each new rule of law)

- (14) For each ground/issue raised, does this claim rely on newly discovered evidence? What is the evidence and when did you discover it? Why has this newly discovered evidence not been previously available to you? (list each ground separately)

- (15) For each ground/issue raised, does the newly discovered evidence establish your innocence? How?

- (16) For each ground/issue raised, does the newly discovered evidence establish a federal constitutional error? Which provision of the Constitution was violated and how?

- (17) Provide any other basis for your application not previously stated.

Date: _____

Signature: _____

Proof of Service on Respondent MUST be Attached.